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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,464	06/19/2000	GRAHAM SCOTT	IRC253	5910

23370            7590            04/02/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
1771	11

DATE MAILED: 04/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/529,464

Applicant(s)

SCOTT ET AL.

Examiner

Jenna-Leigh Befumo

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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 21 January 2003.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 28-37 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 21 January 2003 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment A, submitted as Paper No. 10 on January 21, 2003, has been entered. Claims 8, 10, 11, and 19 have been amended. Therefore, the pending claims are 1 – 37. Claims 28 – 37 are withdrawn from consideration as being drawn to a nonelected invention.
2. The Abstract submitted by the Applicant is sufficient to overcome the objection to the specification set forth in section 11 of the previous Office Action.
3. Amendment A is sufficient to overcome the objection to the specification set forth in section 13 of the previous Office Action.
4. Amendment A is sufficient to overcome the objection to claim 8 set forth in section 14 of the previous Office Action.
5. Amendment A is sufficient to overcome the 35 USC 112 2<sup>nd</sup> paragraph rejections set forth in section 17 of the previous Office Action.

### ***Priority***

6. The Applicant will need to provide a new declaration which properly claims priority to the PCT application. This can be provided by the Applicant when allowable subject matter is indicated.

### ***Drawings***

7. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on January 21, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

*Specification*

8. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. The attempt to incorporate subject matter into the patent application by reference to a hyperlink and/or other forms of browser-executable code is considered to be an improper incorporation by reference. Further, the hyperlink that the Applicant refers to does not exist, and therefore, does not provide any further information and cannot serve as a reference. The hyperlink must be removed from the specification and cannot be made inactive as requested by the Applicant.

*Claim Rejections - 35 USC § 102*

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 3, and 4 stand rejected under 35 U.S.C. 102(e) as being anticipated by Vinod (5,965,232) for the reasons of record.

11. Claims 1, 2, 9, 10, 11, 16, and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cooney (3,823,056) for the reasons of record.

*Claim Rejections - 35 USC § 103*

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1, 2, 9, 16, 19, 20, and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al. (WO 93/08325) in view of Hamilton et al. (5,198,277) for the reasons of record.

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14. Claims 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vinod for the reasons of record.

15. Claims 5 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vinod in view of Howell et al. (5,645,782) for the reasons of record.

16. Claims 1 – 4, 9 – 12, 15 – 19, and 22 – 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (WO 95/23691) in view of Vinod for the reasons of record.

17. Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins and Vinod as applied to claim 12 above, and further in view of Blakely et al. (WO 90/14107) for the reasons of record.

18. Claims 20, 21, 26, and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins in view of Vinod and Terry et al. for the reasons of record.

***Response to Arguments***

19. Applicant's arguments filed January 21, 2003 have been fully considered but they are not persuasive. The Applicant argues that Vinod cannot anticipate the current invention since the stabilizing layer does not correspond to the Applicant's backing fabric (Amendment A, page 7). The Applicant's supports this argument by stating that the reinforcement web (which is recited in claim 2 and 22) must be disposed above the backing fabric and in Vinod the cushioning layer is taught to be located below the stabilizing layer. First it is noted that in this instance, Vinod was not used to reject claims 2 or 22 nor did the Examiner intimate that Vinod taught using a reinforcing web in the manner claimed by the Applicant. Therefore, the Applicant's arguments with respect to the reinforcing layer are not commensurate in scope with the claims which were rejected by Vinod.

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Specifically claim 1 is limited to a floor covering comprising a woven layer which is above a backing layer which is above a backing fabric. Since the claim uses the term “comprising” additional layers and components can be included in the laminate and still read on this claim. Further, the Applicant has not narrowly defined the “backing layer” so that the stabilizing layer taught by Vinod will not qualify as a backing layer. The cushioning layer that the Applicant argues cannot be below the stabilizing layer is irrelevant since the Applicant does not claim the reinforcing layer in these claims and the Applicant uses the term “comprising” so that additional layers can be present in the prior art as long as the prior art has the layers recited in the claim. In this case Vinod does teach the three layers claimed in claim 1, 3, and 4 are therefore anticipates the claim. And until the Applicant adds the limitation that the reinforcement layer in present between the backing fabric and backing layer to claim 1 than this limitation does not have to be present in the prior art to reject claim 1. Therefore, the rejection is maintained.

20. The Applicant argues that Cooney does not anticipate the claimed invention since the woven fabric of Cooney “appears to be merely a reference to the method of affixing the carpet pile to a primary backing” and Cooney is not using a woven face cloth (Amendment A, page 8). Cooney teaches that the floor covering has a conventional wear layer which can be woven (column 3, lines 10 – 14). The Examiner concedes that this most likely refers to a pile fabric which is produced by weaving the pile yarns into the fabric as the fabric is woven. However, this fabric still qualifies as a woven fabric whether or not it has pile yarns woven into the fabric since the fabric backing is woven and fabric is produced using weaving techniques. Again it is noted that the Applicant uses “comprising” when reciting the structural limitation of the

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composite and therefore, the Applicant fails to exclude woven fabrics which include pile yarns that are woven into the fabric. Further, the Applicant in no way defines in the claims that the woven fabric cannot have pile yarns or additional yarns inserted in the fabric. Therefore, since Cooney teaches that the pile fabric can be produced by weaving, Cooney specifically teaches using a woven fabric as the face fabric. This anticipates the Applicant's claims, as set forth previously. Therefore, the rejection is maintained.

21. Additionally, the Applicant argues that the rejection based on Terry et al. is not sufficient since Terry et al. teaches using a tufted pile fabric as the face fabric (Amendment A, page 9). However, the tufted pile fabric has a woven primary backing. Thus, the face layer comprises a woven fabric which meets the limitations recited in the claims. The claims in no way exclude fabric which include pile yarns or additional materials which are placed on top of the woven layer. Therefore, the Applicant's arguments are not commensurate in scope with the product claimed. Thus, the rejection is maintained.

22. The Applicant argues that the 103 rejections based on Vinod aren't sufficient since Vinod does not teach the proper layers (Amendment A, page 10). However, as set forth above, it is felt that Vinod does sufficiently disclose the layers in those claims which it has been used to reject. Hence, since these claims do not mention the reinforcing layer then Vinod does not need to teach this feature. Therefore, the rejection is maintained.

23. The Applicant also argues that it is improper to combine Vinod and Higgins since Vinod doesn't provide sufficient motivation to use a woven face fabric and one of ordinary skill would not want to use a woven face fabric with Higgins since Higgins is drawn to a pile fabric (Amendment A, pages 11 – 12). First, Higgins is drawn to a process for bonding the primary

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carpet fabric in-situ without pre-curing the polyurethane-forming composition. Higgins teaches that primary carpet fabric may have different embodiments and the structure of the primary carpet fabric is not critical to the present invention (page 4, lines 6 – 8). Hence, not only does Higgins teach that the structure of the fabric can vary, but the structure of the fabric doesn't effect the invention, and is not critical. Second, Vinod is drawn to decorative floor coverings. Vinod specifically addresses carpets and vinyl flooring and teaches that the purpose of the invention is to combine the positive aspects of carpets, i.e., comfort, softness, cushioning, and warmth, with the positive aspects of vinyl flooring, i.e., stain-resistance, easy to clean, and increase decorative designs (column 1, lines 19 – 36). Thus, Vinod is teaching the decorative fabric layer taught in the invention is intended to be used instead of carpet and vinyl due to the fact that fabric maintains the comfort and feel of carpet while having better stain resistance, being easier to clean, and have more decorative designs available. Therefore, Vinod provides motivation to one of ordinary skill in the art to use the decorative fabric layer instead of a pile fabric layer in flooring systems, and Vinod teaches that the fabric layer is not critical to the invention.

Additionally, the Applicant's argument that improve stain resistance and ease of cleaning is not a sufficient reason to combine the two references is traversed. One of the biggest concerns when producing carpets is producing something which will resist stains and be easy to clean since carpets are only changed after 10 or more years. Consumers want a carpet which can be easily cleaned and do not readily stain even if the carpet is located in a heavily traveled area. Thus, the improved ease of cleaning and stain resistance would provide sufficient motivation for one of ordinary skill in the art since those characteristics are important to consumers who have

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the option of buying easier cleaning and more resilient flooring options such as vinyl, tile, and wood flooring. Further, one would be able to use the decorative fabric layer taught by Vinod in the invention taught by Higgins without destroying the invention, and in fact producing more durable and decorative floor tiles since the fabric is easier to clean and available in more decorative colors. Hence the rejection is maintained.

24. With respect to the Applicant's arguments that the Higgins is designed to avoid the need for an adhesive layer, the combination of the references set forth in the previous Office Action does not argue that the padding structure taught by should be changed (Amendment A, pages 12 – 13). While additional references were used to teach specific compositions for pre-coat layers as well as specific structure of nonwoven fabrics and other layers, Higgins clearly teaches that the pre-coat layers and the nonwoven layers should be used in the padding structure. Therefore, Higgins suggest these layers are present and one of ordinary skill would look to the prior art to see what materials and compositions are suited for the intended use. Thus, the rejections which include additional references such as Hamilton and Blakely do not destroy Higgins, but build on the structure and materials which are suggested by the Higgins reference. Therefore, these rejections are maintained.

25. Finally, the Applicant argues that there is no suggestion in Higgins and Terry et al. to use a bitumen layer (Amendment A, page 14). However, as set forth in the last Office Action, the modified bitumen layer taught by Terry et al. is relatively inexpensive and has good moisture and heat resistance prevent the edges from curling. Therefore, Terry et al. discloses that the modified bitumen layer does have beneficial properties which would improve the carpet tile while being less expensive. Thus, the rejection is maintained.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
March 28, 2003



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